



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

APR 16 2009

REPLY TO THE ATTENTION OF:

AE-17J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Pamela F. Faggert
Vice President and Chief Environmental Officer
Dominion Resources Services, Inc.
5000 Dominion Blvd
Glen Allen, Virginia 23060-3308

RE: Notice and Finding of Violations issued to Dominion Resources Services, Inc.,
Dominion Resources, Inc., Commonwealth Edison Company, and Mirant
Americas, Inc.

Dear Ms. Faggert:

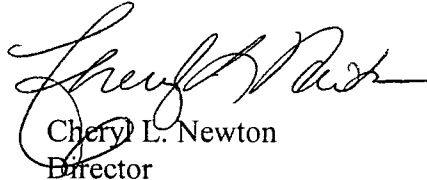
The U. S. Environmental Protection Agency is issuing the enclosed Notice of Violations and Finding of Violations (Notice) to Dominion Resources Services, Inc., Dominion Resources, Inc., Commonwealth Edison Company, and Mirant Americas, Inc. (Parties). This Notice is issued in accordance with Section 113(a) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a).

EPA has determined that the Parties are violating the Prevention of Significant Deterioration requirements under Section 165 of the Act, 42 U.S.C. § 7475, the Non-Attainment New Source Review requirements under Sections 171-193 of the Act, 42 U.S.C. §§ 7501-15, the New Source Performance Standards under Section 111 of the Act, 42 U.S.C. § 7411, and the Illinois and Indiana State Implementation Plans at its State Line Energy, L.L.C. and Kincaid Generation, L.L.C. stations, located in Hammond, Indiana, and Kincaid, Illinois, respectively, and the State Line Generating Station's Title V Permit.

EPA is offering you an opportunity to confer with us about the violations cited in the Notice. The conference will give you an opportunity to present information on the specific findings of violations, and the steps you will take to bring the facilities into compliance. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

You may call may contact Ethan Chatfield at (312) 886-5112 or Mark Ackerman at (312) 353-4145 to request a conference. You should make your request for a conference no later than 10 calendar days after you receive this letter, and we should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely yours,



Cheryl L. Newton
Director
Air and Radiation Division

Enclosure

cc: Thomas F. Farrell II, Chief Executive Officer /
Dominion Resources, Inc.

S. Linn Williams, Vice President and General Counsel
Mirant Americas Generation, LLC.

Mary O'Toole, Director of Environmental Strategy
Commonwealth Edison

Phil Perry, Branch Chief
Office of Air Quality / Compliance Branch
Indiana Department Environmental Management

Ray Pilapil, Manager
Compliance and Enforcement Section
Illinois Environmental Protection Agency

David Rieser
McGuireWoods LLP

Neal Cabral
McGuireWoods LLP

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	
)	
Dominion Resources Services, Inc.)	
Glen Allen, Virginia)	To Proceedings Pursuant
)	Section 113(a)(1) and (a)(3) of the
Dominion Resources, Inc.)	Clean Air Act,
Richmond, Virginia)	42 U.S.C. §7413(a)(1) and (a)(3)
)	
Commonwealth Edison Company,)	EPA-5-09-11-IN/IL
Chicago, Illinois)	
)	
and)	
)	
Mirant Americas, Inc.)	
Atlanta, Georgia)	
)	

NOTICE AND FINDING OF VIOLATION

This Notice and Finding of Violation (Notice) is issued to Dominion Resources Services, Inc., Dominion Resources, Inc., Commonwealth Edison Company, and Mirant Americas, Inc. (Parties) for violations of the Clean Air Act (Act), 42 U.S.C. §§ 7401 *et seq.*, at the State Line Energy Generating Station and Kincaid Electric Generating Station located in Hammond, Indiana, and Kincaid, Illinois, respectively.

This Notice is issued pursuant to Sections 113(a)(1) and (a)(3) of the Act, 42 U.S.C. § 7413(a)(1) and (3). The authority to issue this Notice has been delegated to the Regional Administrator of U.S. EPA Region 5, and redelegated to the Director, Air and Radiation Division.

A. STATUTORY AND REGULATORY BACKGROUND

Prevention of Significant Deterioration

1. When the Act was passed in 1970, Congress exempted existing facilities, such as the coal-fired power plants that are the subject of this Notice, from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in *Alabama Power v. Costle*, 636 F.2d 323, 400 (D.C. Cir. 1979), “[t]he statutory scheme intends to ‘grandfather’ existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program.” Rather, the Act requires grandfathered facilities to install

modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.

2. The Prevention of Significant Deterioration (PSD) provisions of Part C of Title I of the Act require preconstruction review and permitting for modifications of stationary sources. *See* 42 U.S.C. §§ 7470-7492. Pursuant to applicable regulations, if a major stationary source located in an attainment or unclassified area is planning to make a major modification, then that source must obtain a PSD permit before beginning actual construction. *See* 40 C.F.R. § 52.21(a)(2)(i). To obtain this permit, the source must, among other things, undergo a technology review and apply the Best Available Control Technology (BACT); perform a source impact analysis; perform an air quality analysis and modeling; submit appropriate information; and conduct additional impact analyses as required.

3. Pursuant to Section 110 of the Act, 42 U.S.C. § 7410, each State is responsible for submitting to EPA for approval an implementation plan which specifies how the State will achieve, maintain, and enforce all primary and secondary National Ambient Air Quality Standards (NAAQS) in the State.

4. Under Section 110(a) of the Act, each State Implementation Plan (SIP) must include a permit program to regulate the modification and construction of any stationary source of air pollution as necessary to assure that NAAQS are achieved. SIPs must include enforceable emission limitations, control measures, and schedules for compliance. Upon EPA's approval of a SIP, the plans become independently enforceable by the federal government, as stated under Section 113(a) of the Act, 42 U.S.C. § 7413(a).

5. On June 19, 1978, EPA promulgated PSD regulations pursuant to Part C of Title I of the Act. 43 *Fed. Reg.* 26403 (June 19, 1978). These regulations, codified at 40 C.F.R. § 52.21, apply to any major stationary source or major modification that would be constructed in an area designated as attainment or unclassified under the Act.

6. The PSD regulations, at 40 C.F.R. § 52.21(a), state that, "[t]he provisions of this section are applicable to any [SIP] which has been disapproved with respect to prevention of significant deterioration of air quality in any portion of any State where the existing air quality is better than the national ambient air quality standards."

7. On August 7, 1980, EPA disapproved Indiana's proposed PSD program, 45 *Fed. Reg.* 52676, 52741 (August 7, 1980). Indiana subsequently incorporated by reference the PSD regulations of 40 C.F.R. § 52.21(b) through (w) into the Indiana SIP. On September 30, 1980, EPA granted a partial delegation to Indiana. 46 *Fed. Reg.* 9580, 9583 (January 19, 1981). On March 3, 2003, EPA conditionally approved Indiana's PSD program. 68 *Fed. Reg.* 9892 (effective April 2, 2003). On June 18, 2007, EPA partially approved revisions related to EPA's NSR Reform regulations in the Indiana's PSD program. 72 *Fed. Reg.* 33395 (effective July 18, 2007).

8. On August 7, 1980, EPA disapproved Illinois' proposed PSD program and then incorporated by reference the PSD regulations of 40 C.F.R. § 52.21(b) through (w)

into the Illinois SIP. 40 C.F.R. § 52.738 and 45 Fed. Reg. 52676, 52741 (August 7, 1980). The Federal PSD regulations appearing at 40 C.F.R. § 52.21 are still incorporated into and part of the Illinois SIP. On December 10, 2003, EPA issued a final rule incorporating newly promulgated paragraphs of the New Source Review Reform rule into the Illinois SIP. 68 Fed. Reg. 74489.

9. The PSD regulations at 40 C.F.R. § 52.21(2)(iii) provide that “no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section apply shall begin actual construction without a permit that states that the stationary source or modification would meet those requirements.”

10. The PSD regulations define “major modification” as “any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase” of a regulated pollutant. 40 C.F.R. § 52.21(b)(2)(i).

11. The PSD regulations at 40 C.F.R. § 52.23 state, among other things, that failure to comply with any provision of 40 C.F.R. Part 52, or with an approved regulatory provision of a SIP, shall render the person or governmental entity in violation of a requirement of an applicable implementation plan and subject to enforcement action under section 113 of the Act.

Non-Attainment New Source Review

12. The non-attainment New Source Review (NA-NSR) provisions of Part D of Title I of the Act require preconstruction review and permitting for modifications of stationary sources. *See* 42 U.S.C. §§ 7470-7492. Pursuant to applicable regulations, if a major stationary source located in a non-attainment area is planning to make a major modification, then that source must obtain a NA-NSR permit before beginning actual construction. *See* 40 C.F.R. § 51.160(i). To obtain this permit, the source must, among other things, undergo a technology review and achieve Lowest Achievable Emission Rates (LAER); obtain offset credits; perform a source impact analysis; perform an air quality analysis and modeling; submit appropriate information; and conduct additional impact analyses as required.

13. On February 16, 1982, EPA approved Indiana’s NA-NSR SIP rules, which were incorporated into Section 19 of the Indiana Air Pollution Code (APC 19). 47 *Fed. Reg.* 6621 (February 16, 1982). APC 19 governed the preconstruction review of modifications of facilities in nonattainment areas that occurred prior to December 6, 1994, when subsequent regulations went into effect. The definitions applicable to the APC 19 NA-NSR provisions were codified at 325 Indiana Administrative Code (IAC) 1-1. 46 *Fed. Reg.* 54941 (November 5, 1981), and became effective on December 6, 1981.

14. On February 25, 1994, Indiana submitted revisions to its SIP to satisfy the new NSR requirements of the 1990 Clean Air Act Amendments. On October 7, 1994, EPA approved Sections 2-1 and 2-3 of Chapter 326 of the Indiana Administrative Code (326 IAC 2-1, 2-3) as SIP revisions replacing APC 19. 59 *Fed. Reg.* 51108 (Oct. 7, 1994) (effective December 6, 1994). 40 C.F.R. § 52.770(c)(94). Included in the NSR SIP

revisions were changes to the definitions previously codified at 325 IAC 1-1; the definitions now applicable to NA-NSR in Indiana appear at 326 IAC 2-3-1.

15. For construction or major modification of a major stationary source *on or after* December 6, 1994 in a nonattainment area, the Indiana NA-NSR SIP prohibits such construction or modification without first obtaining a permit in accordance with NSR requirements, which include the achievement of LAER and offsetting emission reductions. 326 IAC 2-1. In this context, a “major modification” means “any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant which is being regulated under the Clean Air Act.” 326 IAC 2-3-1. It does not, however, include routine maintenance, repair, and replacement. *Id.* A “major stationary source” is also defined in this context as “any stationary source of air pollutants which emits, or has the potential to emit, one hundred (100) tpy or more of any air pollutant subject to regulation under the Clean Air Act.” 326 IAC 2-3-1.

16. On June 18, 2007, EPA partially approved Indiana’s NSR Reform regulations. 72 *Fed. Reg.* 33395 (effective July 18, 2007).

New Source Performance Standards

17. Under Section 111 of the Act, 42 U.S.C. § 7411, the Administrator promulgated the New Source Performance Standards (NSPS) General Provisions, at 40 C.F.R. Part 60, Subpart A, and the “Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978,” codified at 40 C.F.R. Part 60, Subpart Da. Subpart Da applies to each electric utility steam generating unit capable of combusting more than 73 megawatts (250 million Btu per hour) heat input of fossil fuel (alone or in combination with any other fuel). 40 C.F.R. § 60.40a(a)(1).

18. 40 C.F.R. § 60.14(a) provides that “...any physical or operational change to an existing facility which results in an increase in the emission rate to the atmosphere of any pollutant to which a standard applies shall be considered a modification within the meaning of section 111 of the Act. Upon modification, an existing facility shall become an affected facility for each pollutant to which a standard applies and for which there is an increase in the emission rate to the atmosphere.”

19. 40 C.F.R. § 60.42a(a)(1) provides that no owner or operator subject to the provisions of [40 C.F.R. Part 60, Subpart Da] shall cause to be discharged into the atmosphere from any affected facility any gases which contain particulate matter in excess of 0.03 lb per million Btu heat input derived from the combustion of solid, liquid, or gaseous fuel.

20. 40 C.F.R. § 60.42a(b) provides that no owner or operator subject to the provisions of [40 C.F.R. Part 60, Subpart Da] shall cause to be discharged into the atmosphere from any affected facility any gases which exhibit greater than 20 percent opacity, except for one six-minute period per hour of not more than 27 percent opacity.

21. 40 C.F.R. § 60.43a(a)(1) provides that no owner or operator subject to the provisions of [40 C.F.R. Part 60, Subpart Da] shall cause to be discharged into the atmosphere from any affected facility which combusts solid fuel or solid-derived fuel...any gases which contain sulfur dioxide in excess of 1.2 lb per million Btu and 10 percent of the potential sulfur dioxide emissions (90 percent reduction).

22. The NSPS General Provisions, at 40 C.F.R. § 60.11(d), require that at all times, including periods of startup, shutdown, and malfunction, owners and operators must, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

Opacity Standard

23. Pursuant to 326 IAC 5-1-2 of the Indiana State Implementation Plan (Opacity Limitations), except as provided in 326 IAC 5-1-3 (Temporary Alternative Opacity Limitations), opacity shall meet the following, unless otherwise stated in this permit: (a) Opacity shall not exceed an average of twenty percent (20%) in any one (1) six (6) minute averaging period as determined in 326 IAC 5-1-4; (b) Opacity shall not exceed sixty percent (60%) for more than a cumulative total of fifteen (15) minutes (sixty (60) readings as measured according to 40 C.F.R. 60, Appendix A, Method 9 or fifteen (15) one (1) minute non-overlapping integrated averages for a continuous opacity monitor) in a six (6) hour period.

Title V Requirements

24. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. *See 57 Fed. Reg.* 32295; 40 C.F.R. Part 70. EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. *See 61 Fed. Reg.* 34228; 40 C.F.R. Part 71.

25. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirement to timely submit an application for a permit, including information required to be submitted with the application.

26. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan. 42 U.S.C. § 7661c(a).

27. 40 C.F.R. § 70.1(b) provides that: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements." *See also* 35 IAC 201 and 326 IAC 2-7-2.

28. 40 C.F.R. § 70.2 defines “applicable requirement” to include “(1) [a]ny standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter . . .”

29. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act. *See also* 35 IAC 201 and 326 IAC 2-7-2.

30. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content. *See also* 35 IAC 201 and 326 IAC 2-7-2.

31. 40 C.F.R. § 70.5(b) provides that: “Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.” *See also* 35 IAC 201 and 326 IAC 2-7-2.

Indiana’s Title V Requirements

32. EPA gave interim approval of the Indiana Title V program on November 14, 1995. *See* 60 *Fed. Reg.* 57188 (effective on December 14, 1995). EPA fully approved the Indiana Title V program on December 4, 2001. *See* 66 *Fed. Reg.* 629469 (effective on November 30, 2001).

33. The Indiana Title V operating permit program at 326 IAC 2-7-3 provides that it unlawful to violate any requirement of a permit issued under Title V or to operate a major source except in compliance with a permit issued by a permitting authority under Title V.

34. 326 IAC 2-7-5 provides that each Title V permit include, among other things, enforceable emission limitations and standards as are necessary to assure compliance with applicable requirements of the Act and the requirements of the applicable SIP.

35. 326 IAC 2-7-4 requires that a source submit a complete permit application which, among other things, identifies all applicable requirements, certifies compliance with all applicable requirements.

36. Condition D.1.1 of State Line’s Part 70 Operating Permit issued June 30, 2004, states; “Opacity shall not exceed an average of twenty percent (20%) in any one (1) six (6) minute averaging period as determined in 326 IAC 5-1-4”.

Illinois' Title V Requirements

37. EPA gave interim approval of Illinois' Title V program on March 7, 1995. *See* 60 *Fed. Reg.* 12478 (effective on March 7, 1995). U.S. EPA fully approved the Illinois Title V program on December 4, 2001. *See* 66 *Fed. Reg.* 62946 (effective on November 30, 2001).

38. The 415 Illinois Compiled Statutes 5/39.5 contains the Illinois Clean Air Act Permit Program (CAAPP) pursuant to Title V of the Act. The regulations governing the Illinois Title V permitting program are codified at 35 IAC 201, and are federally enforceable pursuant to Section 113(a)(3).

39. 415 ILCS 5/39.5.5(c) provides that an owner or operator of a CAAPP source shall submit its complete CAAPP application consistent with the Illinois Protection Act and applicable requirements.

40. 415 ILCS 5/39.5.5(c) provides that to be deemed complete, a CAAPP application must provide all information . . . sufficient to evaluate the subject source and its application and to determine all applicable requirements, pursuant to the Act and regulations there under, the Illinois Protection Act and regulations there under.

41. 415 ILCS 5/39.5.6 provides that it shall be unlawful for any person to violate any terms or conditions of a permit issued under this Section, to operate any CAAPP source except in compliance with a permit issued by the Agency under this Section or to violate any other applicable requirements and that all terms and conditions of a permit issued under this section are enforceable by U.S. EPA and citizens under the Act, except those, if any, that are specifically designated as not being federally enforceable in the permit pursuant to paragraph 7(m) of this Section.

42. 35 IAC 201.208 provides that an applicant for a CAAPP permit shall supplement its application with any information for an emission unit of the source that is needed to determine the applicability of any applicable requirement or to set forth in a permit any applicable requirement, when such information is requested by the Agency, pursuant to Section 39.5(5)(g) of the Act, or when the applicant becomes aware that such information has not been submitted or that incorrect information has been submitted, pursuant to 39.5(5)(i) of the Act.

B. FACTUAL BACKGROUND

43. Dominion Resources Services, Inc., Dominion Resources, Inc., Commonwealth Edison Company, and Mirant Americas, Inc. are/were each corporations, authorized to do business in Illinois and Indiana.

44. Dominion Resources Services, Inc., Dominion Resources, Inc., Commonwealth Edison Company, and Mirant Americas, Inc. are each a "person," as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).

45. At times relevant to this Notice, Dominion Resources Services, Inc., Dominion Resources, Inc., Commonwealth Edison Company, and/or Mirant Americas, Inc. were the owner and/or operator of the State Line Generating Station and Kincaid Electric Generating Station, located in Hammond, Indiana, and Kincaid, Illinois, respectively.

46. The State Line Generating Station is located in Lake County, which in January 1998 to February 1999 was classified as non-attainment for PM₁₀ (particles with an aerodynamic diameter less than or equal to a nominal 10 microns), sulfur dioxide (SO₂), and carbon monoxide (CO). From 2004 to present, Lake County was in nonattainment for the 8-hour Ozone Standard and from 2005 to present for the PM_{2.5} (particles with an aerodynamic diameter less than or equal to a nominal 2.5 microns).

47. The Kincaid Generating Station is located in Christian County, which was an area classified as attainment for PM, NO_x, and SO₂ for all time periods relevant to the violations cited herein.

48. The State Line Generating Station is a fossil fuel-fired electric utility steam generating station located in Hammond, Lake County, Indiana and has a potential to emit of greater than 100 tons per year of NO_x, SO₂, CO, and PM. The Station consists of two coal-fired boilers for electric generation, Units 3 and 4, with net generating capacities of 197 and 318 MW, respectively. Each boiler has a heat input greater than 250 million Btu per hour and began operating in 1956 and 1962.

49. The Kincaid Generation Station is a fossil fuel-fired electric utility steam generating station located in Kincaid, Christian County, Illinois and has a potential to emit of greater than 100 tons per year of NO_x, SO₂, and particulate matter (PM). The station consists of two coal-fired boilers for electric generation, Units 1 and 2, with current net generating capacities of 579 MW. Each boiler has a heat input greater than 250 million Btu per hour and began operating in 1967 and 1968 respectively.

50. The State Line Energy and Kincaid Generation Stations are “fossil fuel-fired steam electric plant of more than 250 million British thermal units per hour.” Therefore, the both stations constitute a “major stationary source” within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a); and a “major emitting facility” within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1).

51. Between 1994 and 2007, various physical changes or changes in the method of operation were made at the State Line Generating Station Units 3 and 4 and Kincaid Generating Station Units 1 and 2. A description of the changes are included in Appendix A.

52. Based upon review of Part 70 Operating Permit Quarterly Deviation and Compliance Monitoring Reports submitted by Dominion Energy for State Line Generating Station for 1st Quarter 2004 to 4th Quarter 2008, the facility reported a total of 4,770 minutes of violations of the 20 percent, 6-minute average opacity limitation for Unit 4. The number of minutes these units were in violation of the applicable opacity limit, per quarter, is provided in Table 1, below.

Table 1: Minutes of Violations of Opacity Limit for State Line Unit 4:

Year	First Quarter	Second Quarter	Third Quarter	Fourth Quarter
2004	156	360	6	48
2005	234	30	234	72
2006	54	108	546	174
2007	234	270	354	180
2008	606	222	480	402

C. NOTICE AND FINDING OF VIOLATIONS

Violations of the Prevention of Significant Deterioration Provisions and Non-Attainment New Source Review

53. The projects identified in Appendix A caused a significant net emissions increase, as defined in 40 C.F.R. § 52.21, 40 C.F.R. § 51.165, Indiana SIP, and/or Illinois SIP of SO₂, NO_x, CO, and/or PM₁₀.

54. The projects identified in Appendix A each constituted a “major modification,” as that term is defined in 40 C.F.R. § 52.21, 40 C.F.R. § 51.165, Indiana SIP, and/or Illinois SIP.

55. For the modifications identified in Appendix A, the Parties failed to obtain a PSD and/or NA-NSR permit as required by 40 C.F.R. § 52.21, 40 C.F.R. § 51.165, Indiana SIP, and/or Illinois SIP.

56. The Parties violated and continue to violate Section 165 of the Act, 42 U.S.C. § 7475, Sections 171-193 of the Act, 42 U.S.C. §§ 7501-15, 40 C.F.R. § 52.21, the Illinois SIP and/or the Indiana SIP by constructing major modifications to existing major sources at the State Line and Kincaid Generating Stations without, in part, applying for or obtaining NA-NSR and/or PSD permits and operating the modified facilities without installing LAER and/or BACT.

Violations of the Standards of Performance for Electric Utility Steam Generating Units

57. The replacement of the air heater at Kincaid Generating Station Unit 2 was a “physical or operational change” as defined by 40 C.F.R. 60.14. The change resulted in an increase in net generating capability from a maximum boiler design rate of 608 MW to

at least 625 MW, resulting in hourly emission increases of PM, SO₂, and NO_x. Therefore, the replacement of the air heater without complying with the requirements in 40 C.F.R. Part 60, Subpart Da is a violation of 40 C.F.R § 60.42a and 40 C.F.R § 60.43a.

Violations of the Title V Permit – Opacity Limitation

58. The 4,770 exceedances of the 20 percent, 6-minute average opacity limitation at State Line Generating Station Unit 4, identified in paragraph 52, above, are violations of Condition D.1.1 of State Line Generating Station's Title V permit.

Violations of the Title V – Permit Program

59. The Parties failed and/or continue to fail to submit timely and complete Title V permit applications for the Kincaid and State Line Generating Stations with information pertaining to the modifications identified in Paragraph 51 and Appendix A and with information concerning all applicable requirements, including, but not limited to, the requirement to apply, install and operate BACT or LAER for NO_x, SO₂ and/or PM at the plants and also failed to supplement or correct the Title V permit applications for these plants in violation of Sections 502, 503 and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b and 7661c; the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5, 70.6 and 70.7(b); and the Illinois Title V provisions at 415 ILCS 5/39.5 and 35 IAC 201 and/or Indiana Title V provisions at IAC 2-7.

Violations of Indiana State Implementation Plan - Opacity

60. The 4,770 exceedances of the 20 percent, 6-minute average opacity limitation at State Line Generating Station Unit 4, identified in paragraph 52, above, are violations of 326 IAC 5-1-2 of the Indiana.

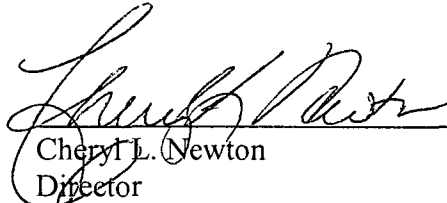
D. ENFORCEMENT

61. Section 113(a) (1) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

62. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides in part that if the Administrator finds that a person has violated, or is in violation of any requirement or prohibition of any rule...promulgated...under...[Title I or Title V of the Act], the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

E. EFFECTIVE DATE

Dated: 4/16/09


Cheryl L. Newton
Director
Air and Radiation Division

Appendix A
Contains Information Claimed as Confidential Business Information

Project	Date	Activity
"State Line Refurbishment Project"	1998	<ul style="list-style-type: none"> - Burner Corner Replacement (Unit 3) - Economizer Replacement (Unit 3) - Primary Superheater Refurbishment (Unit 3) - Upper Furnace Wall Restoration (Unit 3) - Replacement of Lower Wall Orifice (Unit 3) - Turbine Refurbishment/Rebuild (Unit 3) - Precipitator Rebuild (Unit 3) - Secondary Superheater Refurbishment (Unit 3) - Bottom Ash Pit Rework (Unit 3) - Lower Sidewall Panel Replacement (Unit 3) - Superheater and Reheater Outlet Header Replacement (Unit 3) - Sootblower Replacement (Unit 3) - Partial Condenser Retube (Unit 3) - Reheat Superheat Outlet Header Replacement (Unit 4) - Replacement of Nine Cyclones (Unit 4) - Replacement of all Four Reheater Banks (Unit 4) - Lower Furnace East Wall Replacement (Unit 4) - Economizer Section Replacement (Unit 4) - Turbine Refurbishment/Rebuild (Unit 4) - Sootblower Replacement (Unit 4)
State Line Unit 3 Project	2007	<ul style="list-style-type: none"> - Hot Reheat Piping Replacement - Boiler Component Replacement (Reheater Outlet, Pendants, Lower Coutants, and selected waterwalls) - Low Pressure Turbine Replacement
State Line Unit 4 Project	2005	<ul style="list-style-type: none"> - Hot Reheat Piping Replacement - Boiler Component Replacement (Superheat Economizer Inlet Header, Reheater Outlet Headers, Superheater Outlet Header, and Secondary Superheat Platen assemblies) - Low Pressure Turbine Overhaul - Precipitator Refurbishment
Kincaid Unit 2 Project	1994	<ul style="list-style-type: none"> - Replacement of cold side air heater (CSAH) tubes - Replacement of hot side air heater (HSAH) tubes
Kincaid Unit 1 "Capital Improvement Project"	1998	<ul style="list-style-type: none"> - Replacement of all Cyclone Burners - Replacement of Front and Rear Sections of Boiler Walls - Replacement of the Furnace Floor Including Headers,

Contains Confidential Business Information

		<p>Walls, and Panels</p> <ul style="list-style-type: none"> - Complete Replacement of the Tubular Air Heater - Complete Replacement of the Horizontal Reheater - Installation of New Water Lances - Coal Handling Modifications to Accommodate Fuel Switch from Western to PRB
Kincaid Unit 2 "Capital Improvement Project"	1998/9	<ul style="list-style-type: none"> - Replacement of all Cyclone Burners - Replacement of Front and Rear Sections of Boiler Walls - Replacement of the Furnace Floor Including Headers, Walls, and Panels - Installation of New Water Lances - Coal Handling Modifications to Accommodate Fuel Switch from Western to PRB

CERTIFICATE OF MAILING

I, Betty Williams, certify that I sent a Notice of Violation and Finding of Violation, No. **EPA-5-09-11-IN/IL**, by Certified Mail, Return Receipt Requested, to:

Pamela F. Faggert
Vice President and Chief Environmental Officer
Dominion Resources Services, Inc.
5000 Dominion Blvd.
Glen Allen, Virginia, 23060-3308

Barry D. Seaton, Station Director
State Line Energy, L.L.C.
103rd Street and Lake Michigan
Hammond, Indiana 46320

Anu N. Singh, Sr. Environmental Compliance Engineer
Kincaid Generation, L.L.C.
P.O. Box 260
Kincaid, Illinois 62540-0260

Thomas F. Farrell, II
Chief Executive Officer
Dominion Resources, Inc.
120 Tredegar Street
Richmond, Virginia 23219-4306

S. Linn Williams
Executive Vice President and General Counsel
Mirant Americas Generation, LLC
1155 Perimeter Center West
Atlanta, Georgia 30338-5463
Excluding Appendix A

Mary O'Toole
Director of Environmental Strategy
Commonwealth Edison
One Financial Place
440 S. LaSalle Street, 33rd Floor
Chicago, Illinois 60605-1028
Excluding Appendix A

I also certify that I sent copies of the Notice of Violation and Finding of Violation by first class mail to:

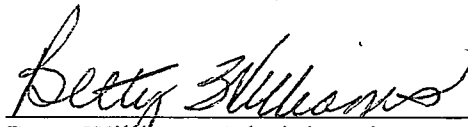
Phil Perry, Branch Chief
Office of Air Quality / Compliance Branch
Indiana Department Environmental Management
100 North Senate Avenue, Room IGCN 1003
Indianapolis, Indiana 46204-2251
Excluding Appendix A

Ray Pilapil, Manager
Bureau of Air
Compliance and Enforcement Section
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62702
Excluding Appendix A

David Rieser
McGuireWoods LLP
77 West Wacker Drive
Suite 4100
Chicago, IL 60601-1818
Excluding Appendix A

Neal Cabral
McGuireWoods LLP
Washington Square
1050 Connecticut Avenue N.W., Suite 1200
Washington, DC 20036-5317
Excluding Appendix A

On the 17th day of April, 2009


Betty Williams, Administrative
Program Assistant

Certified Mail Receipt Number: 7001 0320 0005 8915 9754
7001 0320 0005 8915 9778 - Barry Seaton
7001 0320 0005 8915 9761 - Anu M. Singh
7001 0320 0005 8915 9747 - Thomas F. Farrell, II
7001 0320 0005 8915 9785 - S. Linn Williams
7001 0320 0005 8915 9662 - Mary O'Toole